IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1500 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE VALLABH FLOORING TILES COMPANY

Versus

STATE BANK OF INDIA

Appearance:

1. First Appeal No. 1500 of 1984
MR KR BRAHMBHATT for Appellant No. 1-5
MR AP MEDH for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

The appellant - original defendant has challenged the judgement and decree of the learned Trial Judge only in respect of the awarded interest while decreeing the suit of the respondent - original plaintiff i.e. State Bank of India dated 13.1.1984 in Summary Suit No. 3433 of 1981 filed by the State Bank of India against the appellant - original defendant and the appellant has restricted his claim in this appeal to the extent of Rs.65,000/-.

2. As found from the grounds of memo of appeal, it is the contention of the appellant that the learned Trial Judge ought not to have awarded penal interest while decreeing the suit and further that the interest charged by the plaintiff Bank was illegal and plaintiff Bank was not entitled to recover the same and it is the contention of appellant - original defendant that the decree passed by the learned Trial Judge to that extent deserves to be set aside. It is also submitted by the appellant that the learned Trial Judge has while decreeing the suit, has not properly appreciated the contention that a part of the claim of principal amount was also barred by limitation and therefore, we are required to consider only the challenge in respect of the decree passed by the learned Trial Judge to the extent that whether the learned Trial Judge was justified in awarding penal interest while decreeing the suit of the respondent plaintiff Bank.

3. We have gone through the judgement under challenge and as there is no challenge in respect of the decree passed while decreeing the suit in favour of the plaintiff Bank. The learned Trial Judge has while decreeing the suit has recorded finding in favour of the plaintiff while deciding the issue of limitation raised on behalf of the defendant, that the suit filed by the plaintiff Bank is barred by law of limitation. The learned Trial Judge has in term while deciding the said issue of limitation has decided that the suit filed by the plaintiff Bank is within the law of limitation and further that the learned Judge has also on appreciating the evidence has recorded finding that the plaintiff Bank has proved that plaintiff has given cash credit (Factory Type) of Rs.4,89,367=38ps. to the defendant and the learned Trial Judge has also held that the plaintiff has proved that the plaintiff Bank has given cash credit (Book Debt) of Rs.69,866=72ps.

4. To examine that whether the learned Trial Judge has committed any error while decreeing the suit when the suit was decreed while granting interest as claimed by the plaintiff Bank. As found from the plaint that the suit for recovery was filed by the respondent plaintiff Bank against the appellant - defendant for sum of Rs.5,64,205=60ps. with interest upto the date of the suit and the interest at the rate of 12% p.a. from the date of the suit till realisation. The learned Trial Judge has while deciding the issue no. 4 has on examining the documents executed between the plaintiff Bank and defendant and the appellant defendant has placed reliance upon Ex. 46 and 47 i.e. arrangement letter and it is the contention of the appellant defendant that the plaintiff Bank was not entitled to charge interest for more than 12% p.a. and also relied upon Clause 7 of the Agreement Ex. 46. The learned Trial Judge has while deciding the said issue, has in fact while decreeing the suit, has held that the plaintiff Bank is entitled to 9% interest on sum of Rs.5,51,638=28ps. from 22nd October, 1981 till filing of the suit and accordingly, the learned Trial Judge has after appreciating the oral as well as documentary evidence adduced by the parties before the Trial Court, the Trial Court has decreed the suit of the plaintiff for sum of Rs.5,51,638=28ps. at the rate of 9% p.a. from 22.10.1981 till realisation.

5. In our view, the learned Trial Judge has while awarding interest while decreeing the suit, has only awarded interest at the rate of 9% p.a. and no error is committed by the learned Trial Judge while decreeing the suit of the plaintiff and even the plaintiff Bank has claimed 12% interest from the defendant but the learned Trial Judge has awarded only 9% interest p.a. while decreeing the suit of the plaintiff Bank. On examining the record and judgement under challenge, the appeal filed by the appellant deserves to be dismissed. Accordingly, appeal is dismissed. The judgement and decree dated 13.1.1984 passed in Summary Suit No. 3433 of 1981 is hereby confirmed.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
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